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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

CORAM : HON'BLE SHRI S.R.NAYAK, CJ.
HON'BLE SHRI V.K.SHRIVASTAVA, J.

Misc Appeal (C) No.375 of 2006

APPELLANT : Royal Sundaram Alliance Insurance Company, Through - The Branch Manger Near New Bus Stand Pandri Raipur C.G.H.O.Whites Road, Chennai (Non-Applicant no.3)

Versus

RESPONDENTS :

1. Smt. Lagni Bai w/o Late balram Yadav, aged about 28 years,
2. Mohan Yadav s/o Late Balram Yadav age 12 years (Minor)
3. Kishanlal s/o Late Balram Yadav age 3 years (Minor), Respondent No.1 and 2 through - Mother, Smt.Lagni Bai w/o late Shri Balram Yadav
4. Budhiyarin Bai w/o late Sonuram Yadav age 55 years All are resident of Village Mehna, Post Sambalpur, P.S.Nanadghat District Durg **(Claimants)**
5. Suresh Kumar Verma S/o Sarju Prasad Verma, aged about 30 years R/o Village Amora, P.S.Nandghat Tahsil nawagoan, District Durg. **(Driver Non applicant No.1)**
6. Udesiram Sahu S/o Khojwa Sahu, aged about 70 years R/o Villlage Mehna, P.O.Sambalpur, P.S.Nandghat District Durg. **(Owner 0 Non applicant No.2)**

PRESENT:
Shri SS Rajput, counsel for the appellant.

ORAL ORDER

(Passed on 16th November, 2006)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J. :**

(MB)

This appeal has been directed against the award passed by the Additional Motor Accidents Claims Tribunal, Bhatapara (for short "the Tribunal") on 28.07.2006 in Claim Case No.24 of 2005, whereby, a sum of Rs.3,82,500/- has been awarded to respondents No.1 to 4 - Claimants against that appellant - Insurance Company with a direction that appellant-Insurance Company if chooses may recover the said compensation amount (award) from respondents No. 5 & 6 who are driver and owner of the motor vehicle involved in the accident.

Facts, in brief, are that on 14.07.2005, Balram Yadav, as a labourer was carried in tractor - trolley No. CG - 7D - 2437 & 2438, driven by respondent No.5, and owned by respondent No.6, herein. The tractor - trolley met with an accident. Balram Yadav received severe injuries and succumbed to those injuries. The incident took place due to rash and negligent driving of respondent No.5. The legal representatives of deceased Balram Yadav filed an application under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") claiming compensation of Rs.8,00,000/- against driver, owner and insurer of the vehicle. The appellant, at the relevant time, was the insurer of the said tractor - trolley.

The appellant as well as respondents No.5 & 6 refuted the claim of the claimants. Appellant specially pleaded that for paying compensation the company is not responsible, because the vehicle was plied in contravention of permit condition and breaching the condition of policy.

After appreciation of the evidence, learned Tribunal held that the tractor - trolley owned by respondent No.6 was driven by respondent No.5 rashly and negligently which met with an accident and in the said accident, Balram Yadav received injuries and succumbed to those injuries. Learned Tribunal while holding that there is breach of condition of policy directed that driver and owner of the motor vehicle involved in the accident are liable to pay compensation, however, directed Insurance Company to pay compensation in the first instance and recover the same from owner and driver of the motor vehicle.

Learned counsel appearing for the appellant - Insurance Company would contend that there is no hard and fast rule that in each and every case of this nature, the Insurance company should be directed to pay compensation in the first instance and recover the same from the owner and

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driver of the vehicle involved in the accident. Learned counsel would place reliance on the judgment of the Hon'ble Supreme Court in the case of **National Insurance Co.Ltd. Vs V Chinnamma and others**[1]. That judgment could be distinguished on facts. In that case, it was found that tractor-trolley was misused to carry passengers on fare, whereas in this case it is satisfactorily proved that the deceased as a labourer was going to bring boulders in the tractor-trolley for construction of drainage in agricultural field of vehicle owner.

During argument no other grounds have been raised.

In that view of the matter, we are of the considered opinion that the Tribunal is justified in directing the Insurance Company to pay compensation in the first instance and recover the same from owner and driver of the vehicle involved in the accident. In the circumstance, we do not find any merit in this appeal and it is accordingly dismissed. No costs.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice

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